

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
	)	
Plaintiff,	)	
	)	Civil Action No. _____
v.	)	
	)	
THE GILLETTE COMPANY,	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States and at the request of the United States Environmental Protection Agency ("EPA"), alleges as follows:

**NATURE OF ACTION**

1. This is a civil action brought pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, as amended by the Superfund Amendments and Reauthorization Act of 1986. The United States brings this action to recover response costs it has incurred in responding to releases and threatened releases of hazardous substances into the environment at and from the Former Frith Battery Dump Superfund Site, located in Sageville, Iowa ("the Site").

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c) because the claims arose and the threatened and actual releases of hazardous substances occurred in this district.

### **DEFENDANTS**

4. The Gillette Company ("Gillette") is a corporation incorporated under the laws of the State of Delaware with its principal place of business in Massachusetts.

### **GENERAL ALLEGATIONS**

#### **A. Site Description and Use**

5. The Former Frith Battery Dump Superfund Site ("the Site") is located in Sageville, Iowa, just outside the city of Dubuque. The Site is within a flood plain known as Couler Valley.

6. From approximately 1936 through 1957, a battery disposal and reclamation operation was conducted at the Site in which used batteries were heated to remove the zinc contained within them. The remaining battery casings, the battery cores, and lead were disposed of on the Site.

#### **B. Response Actions Undertaken**

7. In 1999, the Iowa Department of Natural Resources ("IDNR") conducted an Initial Site Investigation and Extended Site Screening at the Site after receiving an anonymous complaint about the Site. The investigations revealed an area, approximately an acre in size, that lacked vegetation and was approximately 85% covered with battery cores. Soil and surface water samples were collected by IDNR during the visit and analytical results of the soil samples

detected high concentrations of lead, zinc, manganese, and arsenic. IDNR then referred the Site to the United States Environmental Protection Agency ("EPA").

8. In June of 2000, EPA, through its contractor, conducted an integrated preliminary assessment/site inspection/removal assessment ("PA/SI/RA") at the Site. Based on the initial findings of the PA/SI/RA it was determined that the contamination at the Site posed a threat to human health and the environment.

9. On July 7, 2000, the EPA issued an Action Memorandum to request and document approval and funding to conduct a time-critical removal action for the Site. The primary contaminant of concern was lead.

10. EPA began Site removal activities on September 8, 2000. The removal consisted of three phases: Phase 1, soil excavation; Phase 2, soil disposal and backfilling; and Phase 3, site remediation.

11. In the course of its response actions at the Site, EPA has incurred approximately \$1 million in response costs.

**C. Defendant's Connection with the Site**

12. General Dry Batteries Incorporated ("General") owned and operated a battery manufacturing plant about a mile from the Site at 3200 Jackson Street, Dubuque, Iowa. This plant manufactured dry-cell or household batteries, the type that were processed at the Site.

13. Most if not all of the batteries processed at the Site were sent to the Site by General for disposal.

14. In 1956 the P.R. Mallory Company ("Mallory") purchased substantially all of the properties and assets of General, including its good will and right to use General's name.

15. Mallory closed the Dubuque facility in or about 1958.
16. Mallory is the successor in interest to, and assumed the liabilities of, General.
17. Through several corporate transactions, The Gillette Company became the successor in interest to, and assumed the liabilities of, General and Mallory.

#### **CLAIM FOR RELIEF**

18. Paragraphs 1 through 17 are realleged and incorporated herein by reference.
19. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part that:

any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for —

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan . . . .
20. The Site is a “facility,” as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
21. General by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances it owned or possessed, which hazardous substances were disposed of at the Site.
22. Mallory by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances it owned or possessed, which hazardous substances were disposed of at the Site.

23. There were "releases" and "threatened releases," as those terms are defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of "hazardous substances," as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), at or from the Site.

24. The United States has incurred "response costs" in responding to the releases and threatened releases of hazardous substances at the Site as that term is defined in Section 101(23)-(25) of CERCLA, 42 U.S.C. § 9601(23)-(25).

25. The response costs incurred by EPA have not been reimbursed by the Defendant or any other person.

26. At the time of the response actions, the Site contained the same kinds of hazardous substances that General and Mallory had by contract, agreement, or otherwise arranged for the disposal of.

27. The Defendant, the Gillette Company, as the successor in interest to General and Mallory, is liable for all response costs incurred by EPA at the Site not inconsistent with the national contingency plan.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, United States of America, respectfully requests that the Court enter judgment in favor of the United States and against the Defendant for all response costs incurred by the United States in connection with the Site, including interest.

Respectfully submitted,

FOR THE UNITED STATES:

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